

CONSENT AGREEMENT

THIS CONSENT AGREEMENT ("Agreement") is made this _____ day of August 2018 by and between the CITY OF SIOUX CITY, an Iowa municipal corporation (the "City"), and BIG OX ENERGY SIOUXLAND, LLC (the "BIG OX"), also collectively referred to in this Agreement as the "Parties".

FINDINGS

WHEREAS, the City, is vested to issue the following findings and issue notice pursuant to Title 13 of the Sioux City Municipal Code "Sewers". This order is based on findings of violation of the conditions of the wastewater discharge permit issued under 13.07.270 of the City's Sewers and Sewer Disposal Ordinance; and

WHEREAS, City owns and operates a wastewater treatment plant administered by the City of Sioux City, Iowa which is adversely impacted by discharges from the industrial users, including **Big Ox**, and has implemented a pretreatment program to control such discharges; and

WHEREAS, **Big Ox** has consistently violated the pollutant limits *and narrative requirements* and reporting requirements in its wastewater discharge permit as previously documented per the attached records of violations.

[Big Ox added language?]

AGREEMENT

THEREFORE, to ensure that **Big Ox** is brought into compliance with its permit limits at the earliest possible date, **IT IS HEREBY AGREED AND ORDERED, BETWEEN Big Ox and the City, THAT Big Ox SHALL:**

1. By **September 24, 2018** submit documentation that the services of a licensed professional engineer specializing in wastewater treatment has been obtained for the purpose of evaluating and recommending improvements to the pretreatment system process which will bring **Big Ox** into compliance with its wastewater discharge permit.

2. By **December 31, 2018**, submit an interim compliance report sealed by a Professional Engineer (P.E.) licensed in the State of Nebraska and Iowa which documents the short-term measures in-place to ensure compliance with the interim allowable loading. The report shall include a list of current treatment equipment including the capacity for each piece of equipment as well as a characterization of the influent loading to the **Big Ox** pretreatment system. The influent loading shall include wastewater parameters including but not limited to BOD, TSS, TKN, Oil and Grease, pH (min, max, average) and a list of material processed for the last six months (source and description). This report shall provide assurances that the compliance point sampler is taking samples from a point where the sample is representative of the waste being discharged to the City and that the sampler is being monitored and maintained as required by the Industrial User Permit. The licensed P.E. shall certify that the current pretreatment system is capable of meeting interim limits contained herein.

3. By **March 31, 2019**, submit a detailed report summarizing the improvements needed to meet proposed future limits as defined in the next issued industrial user permit for the **Big Ox** facility.

What are these. This CA can't be finalized w/o knowing these future limits. 1

where is this to be measured?

why needed?

This report shall be sealed by a Professional Engineer (P.E.) licensed in the State of Nebraska and Iowa and shall include design capacity of the facility's pretreatment system (current compared to the proposed) as well as process schematics demonstrating the process treatment (current and proposed). Pollutants of concern include flow, BOD, TSS, TKN, and Oil and Grease. The report may recommend phasing of the additional treatment to meet the final permit limits for specific parameters.

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4. By **December 31, 2018** install ~~all recommended~~ improvements to the pretreatment system in accordance with the plans and specifications submitted in #3 above to meet the final TSS limits in the re-issued permit.

what reissued permit? Any reissued permits should be re-issued before this is signed.

Demonstrate compliance with the final TSS limits within 60 days after the equipment is installed.

5. By **June 30, 2019** install the additional recommended improvements to the pretreatment system in accordance with #3 above necessary to meet final BOD, TKN and oil & grease limits or as otherwise agreed-upon based on the Engineering Report required above in Section 3.

(what limits?)

Demonstrate compliance within 60 days after each installation milestone is met.

6. Compliance with the interim maximum allowable loading limit of 48,509 lbs/day maximum daily loading is currently in effect. Compliance is dependent upon daily reports (including weekends) which detail the operations from the previous day (due by 10:00 am the following day). Content for the daily report shall be as approved by the City. This limit is only in effect until the re-issued permit becomes effective with alternative interim and final pollutant loading limits.

7. Compliance is also dependent on immediate notification of any upsets or significant changes in the wastewater characteristics discharged. Significant changes in effluent characteristics (changes in flow volumes and pollutant loadings) shall be communicated to the City as soon as Big Ox is aware of the changed effluent. Notification requirements shall be posted in the process area.

what is significant? Should have a section of definition

8. To date, Big Ox has been issued fines in the amount of \$56,000. Of this amount, \$20,000 may be allocated towards the process improvements documented herein. If all previous monthly invoices are paid in full and purchase receipts are submitted to the City demonstrating that monies were allocated for pretreatment improvements, \$20,000 will be credited to the following month's sewer use invoice. In addition, failure to meet the requirements of this Order will result in an additional fine amount of \$1,000 per day for every day it fails to comply with the schedule set out above. Future penalties for violations will be assessed by the City on monthly invoices and penalties issued for future violations will not be adjusted per this provision.

9. In the event Big Ox fails to comply with any of the deadlines set forth, Big Ox shall, within one (1) working day after the expiration of the deadline, notify the City in writing. This notice shall describe the reasons for Big Ox's failure to comply, the additional amount of time needed to complete the remaining work, and the steps to be taken to avoid future delays. This notification in no way excuses Big Ox from its responsibility to meet any later milestones required by future enforcement actions.

Title page says Consent Agreement

10. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Big Ox of its obligation to comply with its industrial user wastewater discharge permit which remains in full force and effect. The City of Sioux City, Iowa reserves the right to seek any

and all remedies available to it under 13.07.480, 13.07.570, 13.07.580 of the City's Title 13 of the Sioux City Municipal Code "Sewers" for any violation cited by this order.

11. Violation of this Consent Order shall constitute a further violation of Title 13 of the Sioux City Municipal Code "Sewers" and subjects **Big Ox** to all penalties described therein.

12. Nothing in this Consent Order shall be construed to limit any authority of the **City** to issue any other orders or take any other action which it deems necessary to protect the wastewater treatment plant, the environment or the public health and safety.

13. This Agreement is Contractual. The terms of this Agreement are contractual and are not a mere recital. If any provision of this Agreement is held to be invalid or unenforceable, all of the remaining provisions shall nevertheless continue in full force and effect.

14. No Construing Against Drafter. All parties have cooperated in the drafting and preparation of this Agreement. Thus, the Agreement should not be construed against or for any party.

15. Choice of Law: The laws of the State of Iowa shall govern the validity, performance, interpretation and enforcement of this Agreement, and all other matters related to this Agreement.

IN WITNESS WHEREOF, the Parties have caused this CONSENT AGREEMENT to be effective as of the date set forth above.

FOR BIG OX ENERGY SIOUXLAND, LLC

FOR THE CITY OF SIOUX CITY, IOWA

Mark Simms, Utilities Director

The remainder of this page is intentionally left blank. Notary signature blocks to follow on the next page.

COUNTY OF _____)

On this _____ day of August, 2018, before me the undersigned, a Notary Public in and for said State, personally appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of Big Ox Energy Siouxland, LLC, and that said instrument was signed on behalf of said limited liability company; and that the said _____, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

Notary Public

COUNTY OF _____)

On this ____ day of August, 2018, before me, a notary public, in and for said County and State, personally appeared Robert Padmore to me personally known, who being duly sworn, did say that he is the City Manager of the City of Sioux City, Iowa, a Municipality created and existing under the laws of the State of Iowa and that said instrument was signed on behalf of said Municipality.

Notary Public